

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA et al,**  
**Plaintiffs,**

**v.**

**EDUCATION MANAGEMENT LLC et al,**  
**Defendants.**

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) **2:07-cv-461**  
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**MEMORANDUM ORDER**

Pending before the Court are THE UNITED STATES' OBJECTIONS TO THE SPECIAL MASTER'S MARCH 14, 2013 REPORT AND RECOMMENDATION NO. 1 CONCERNING ENTRY OF A PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL (Document No. 252), with numerous attached exhibits. Defendants ("EDMC") filed a response in opposition to the Objections, and urge the Court to adopt the R&R and enter the proposed order attached thereto. The Objections are ripe for disposition.

The Honorable Richard A. Levie (Ret.), was appointed by the Court as Special Master on November 8, 2012. After extensive efforts by the parties and the Special Master to resolve and/or narrow the disputes, on March 14, 2013, Judge Levie filed a 17-page REPORT & RECOMMENDATION #1 OF THE SPECIAL MASTER (Plaintiffs' and Defendants' Requests for Entry of a Protective Order Governing Confidentiality Material) ("R&R No. 1") (Document No. 251). Special Master Levie reported that two issues regarding ¶ 7 of the proposed order were outstanding for decision by the Court: (1) the procedure for disclosure of confidential material to third parties in response to FOIA requests (and state law equivalents); and (2) the procedure for intra-governmental disclosures of confidential material, i.e., to other federal

agencies or Congress. It is clear from the United States' Objections, however, that the only remaining dispute involves intra-governmental disclosures. Attached to the R&R is a proposed PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL which the Special Master recommends should be entered by the Court. The Plaintiffs, other than the United States, agree to entry of the proposed order.

The Court is acutely aware of its duty to conduct a *de novo* review of the Special Master's R&R pursuant to Fed. R. Civ. P. 53(f). In that regard, the Court has thoroughly analysed the R&R; the proposed Protective Order; the Objections of the United States and the exhibits attached thereto; and the response in opposition filed by EDMC. In particular, the Court has compared the language of ¶ 7 as recommended by the Special Master with the alternative language for ¶ 7 proposed by the United States.

Upon consideration and reflection, the Court will accept the recommendation of Special Master Levie. The decision of the United States to intervene in civil litigation creates unavoidable complexity because the government has unique interests and capabilities which are simply not applicable to other litigants. For the reasons set forth in the R&R and EDMC's opposition, the Court is of a mind that the proposed Protective Order of the Special Master represents a fair and practical approach to intra-governmental disclosures of Confidential Material in this case. In particular, the Court notes that nothing in the proposed Protective Order prevents the United States Congress or other governmental agencies from fulfilling their statutory and regulatory duties.

In accordance with the foregoing, THE UNITED STATES' OBJECTIONS TO THE SPECIAL MASTER'S MARCH 14, 2013 REPORT AND RECOMMENDATION NO. 1 CONCERNING ENTRY OF A PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL (Document No. 252) are **OVERRULED**. The Report & Recommendation No. 1 of the Special Master is adopted as the opinion of the Court. The proposed PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL attached thereto will be entered by the Court by separate order.

SO ORDERED this 12<sup>th</sup> day of April, 2013.

BY THE COURT:

s/Terrence F. McVerry  
United States District Judge

cc: All counsel of record